

April 2019

Agriprocessors Inc. warrant information

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COMPANY:

SIC 2011

FILE NO. 12476

| INSP. NO. | INSP. DATE | TYPE | | | VIOLATIONS | | | | PENALTY | | APPEAL DOCKET NO. |
|--------------------|-------------------|------|-----|---|------------|----|----|-----|---------|------------------------|---------------------------|
| | | FU | F/C | C | S | NS | FA | W/R | PROP | FINAL | |
| 205978018 | 12/19/06 | | | | | | | | | | |
| 205981681 | 12-12-07 | | | | | | | | | | |
| Y1516 116151052 | 10/31/07 | | | X | 23 | 1 | | | 2 | 145500. ⁰⁰ | 29,750. ⁰⁰ ISA |
| 17975096984 | 2-11-3/19/08 | | | | 32 | | | | 3 | 500. ⁰⁰ | 13,000. ⁰⁰ ISA |
| 12307853 | 5/28- 10/10/08 | | | | | | | | 4 | 10. ⁰⁰ | |
| 12422637 | 7/8- 7/14/02 | | | | 20 | 4 | | | 7 | 104,000. ⁰⁰ | |

Iowa Division of Labor Services
Occupational Safety and Health Bureau

1000 East Grand
Des Moines, IA 50319
Phone: (515)281-3606 FAX: 515-281-7995

Tracey King Case
Contested 7-18-08

EXHIBIT

A

Citation and Notification of Penalty

To:
Agriprocessors, Inc.
and its successors
P.O. Box 920
Postville, IA 52162

Inspection Number: 312307853
Case File/CSHO ID: 12476 / P1582
Inspection Date(s): 05/28/2008 - 06/10/2008
Issuance Date: 07/10/2008

Inspection Site:
220 West Street
Postville, IA 52162

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Iowa Occupational Safety and Health Act. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties proposed, unless within 15 working days (excluding weekends and holidays) from your receipt of this Citation and Notification of Penalty you mail a notice of contest to the Iowa Division of Labor Services at the address shown above. Please refer to the enclosed booklet which outlines your rights and responsibilities and which should be read in conjunction with this form.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and holidays), whichever is longer. **The penalty dollar amount(s) need not be posted and may be marked out or covered up prior to posting.**

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one within the 15 working day contest period. During such an informal conference you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted within 15 working days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 3 Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations. **Unless you inform the Division of Labor in writing that you intend to contest the citation(s) and/or proposed penalty(ies) within 15 working days after receipt, the citation(s) and the proposed penalty(ies) will become a final order of the Iowa Employment Appeal Board and may not be reviewed by any court or agency.**

Penalty Payment - Penalties are due within 15 working days of receipt of this notification unless contested. (See the enclosed booklet.) Make your check or money order payable to "Division of Labor-IOSH". Please indicate the Inspection Number on the remittance.

IOSHA does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For violations which you do not contest, you should notify the Division of Labor promptly by letter that you have taken appropriate corrective action within the time frame set forth on this Citation. Please inform this office in writing of the abatement steps you have taken and of their dates, together with adequate supporting documentation, e.g., drawings or photographs of corrected conditions, purchase/work orders related to abatement actions, air sampling results, etc.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 30 days after the discrimination occurred with the Division of Labor at the address shown above.

Employer Responsibilities and Courses of Action Following an IOSHA Inspection - The enclosed booklet outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Notice to Employees - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Division of Labor at the address shown above and postmarked within 15 working days (excluding weekends and holidays) of the receipt by the employer of this Citation and Notification of Penalty.

Iowa Division of Labor Services
Occupational Safety and Health Bureau

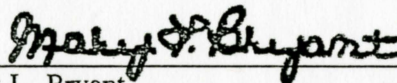
1000 East Grand
Des Moines, IA 50319
Phone: (515)281-3606 FAX: 515-281-7995

PENALTY SUMMARY

Company Name: Agriprocessors, Inc.
Inspection Site: 220 West Street, Postville, IA 52162
Issuance Date: 07/10/2008
Case File/CSHO ID: 12476 / P1582

Summary of Penalties for Inspection Number 312307853

| | | |
|---------------------------------|-------------|----------------|
| Citation 1, Serious | = \$ | 4000.00 |
| TOTAL PROPOSED PENALTIES | = \$ | 4000.00 |



Mary L. Bryant
IOSH Administrator

IOWA'S NEW REQUIREMENTS FOR WORKPLACE PERSONAL PROTECTIVE EQUIPMENT

- > Iowa has adopted by reference changes to the federal OSHA rules concerning personal protective equipment. The changes will become effective on May 15, 2008.
- > ~~The changes require employers to pay for almost all personal protective~~
equipment that is required by OSHA's general industry and construction standards.
- > The U.S. Department of Labor estimates that nationally the changes will result in 21,000 fewer injuries per year.
- > These changes create a clear and consistent policy across OSHA's standards, reducing confusion about the items for which employers are required to pay.
- > The rules do not create new requirements regarding what PPE is needed, nor do they require payment for uniforms, items worn to keep clean, or other items that are not PPE.
- > The rules contain exceptions for certain ordinary protective equipment, such as safety-toe footwear, prescription safety eyewear, everyday clothing, weather-related gear, and logging boots. The costs of footwear worn for metatarsal protection and footwear worn for protection against wet or chemical environments must be paid by the employer.
- > The changes clarify OSHA's intent regarding employee-owned PPE and replacement PPE.
- > If employees choose to use PPE they own, employers do not need to reimburse the employees for the PPE. The changes makes clear that employers cannot require employees to provide their own PPE and the employee's use of PPE they already own must be completely voluntary. Even when an employee provides his or her own PPE, the employer must ensure that the equipment is adequate to protect the employee from hazards in the workplace.
- > The changes require that the employer pay for replacement PPE used to comply with OSHA standards unless an employee has lost or intentionally damaged PPE.
- > Deductions from pay checks, including deductions for PPE, are also governed by Iowa Code Section 91A.5. To view 91A.5, visit
<http://coolice.legis.state.ia.us/Cool-ICE/default.asp?category=billinfo&service=IowaCode>
- > This document is only a summary and does not substitute for the standards. For more information call 515-242-5870 or visit www.osha.gov to see the language of the revised standards.

NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with IOSHA to discuss the citation(s) issued on 07/10/2008. The conference will be held at the Division of Labor office located at 1000 East Grand, Des Moines, IA, 50319 on _____ at _____. Employees and/or representatives of employees have a right to attend an informal conference.

Iowa Division of Labor Services
Occupational Safety and Health Bureau

Inspection Number: 312307853
Inspection Dates: 05/28/2008 - 06/10/2008
Issuance Date: 07/10/2008

Citation and Notification of Penalty

Company Name: Agriprocessors, Inc.
Inspection Site: 220 West Street, Postville, IA 52162

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from an accident.

Citation 1 Item 1a Type of Violation: **Serious**

IAC 875 - Chapter 10

29 CFR 1910.147(c)(7)(i)(B): Each affected employee(s) was not instructed in the purpose and use of the energy control procedure:

- (a) Chicken Department - On May 12, 2008 an employee performing sanitation duties on the Venter had not been instructed in the purpose and use of the energy control procedure for that machine resulting in an amputation injury. This violation was noted on or about 5/28/2008.

| | |
|---|------------|
| Date By Which Violation Must be Abated: | 08/26/2008 |
| Proposed Penalty: | \$ 4000.00 |

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

Iowa Division of Labor Services
Occupational Safety and Health Bureau

Inspection Number: 312307853
Inspection Dates: 05/28/2008 - 06/10/2008
Issuance Date: 07/10/2008

Citation and Notification of Penalty

Company Name: Agriprocessors, Inc.
Inspection Site: 220 West Street, Postville, IA 52162

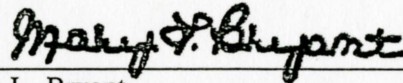
Citation 1 Item 1b Type of Violation: **Serious**

IAC 875 - Chapter 10

1910.212(a)(1): Machine guarding was not provided to protect operator(s) and other employees from hazard(s) created by: moving parts exposed during sanitation activities.

- (a) Chicken Department - On May 12, 2008 an employee performing sanitation duties on the venter / opener was exposed to nip point hazards when blades were not removed prior to cleaning the machine. This violation was noted on or about 5/28/08.

Date By Which Violation Must be Abated: 08/26/2008



Mary L. Bryant
IOSH Administrator

Iowa Division of Labor Services
Occupational Safety and Health Bureau

1000 East Grand
Des Moines, IA 50319
Phone: (515)281-3606 FAX: 515-281-7995

Citation and Notification of Penalty

To:
Agriprocessors, Inc.
and its successors
P.O. Box 920
Postville, IA 52162

Inspection Number: 312422637
Case File/CSHO ID: 12476 / S4823
Inspection Date(s): 07/08/2008 - 07/14/2008
Issuance Date:

Inspection Site:
220 West Street
Postville, IA 52162

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NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

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. The conference will be held at the Division of Labor office located at 1000 East Grand,
Des Moines, IA, 50319 on _____ at _____. Employees and/or
representatives of employees have a right to attend an informal conference.

Citation and Notification of Penalty

Company Name: Agriprocessors, Inc.
Inspection Site: 220 West Street, Postville, IA 52162

Citation 1 Item 1 Type of Violation: **Serious**

IAC 875 - Chapter 10

1910.23(c)(1): Open sided floor(s) or platform(s) 4 feet or more above the adjacent floor or ground level were not guarded by standard railings (or the equivalent as specified in 1910.23(e)(3)(i) through (v)), on all open sides:

- (a) Coop Dump Stand - An employee stood on the open side of the coop dump where the chicken coops are loaded into the dump device. The area was six (6) feet eight (8) inches above the next surface as measured with a Stanley MaxSteel 30' tape. This condition was noted on or about July 9, 2008.

Date By Which Violation Must be Abated:

Proposed Penalty: \$ 5000.00

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from an accident.

Citation 1 Item 2a Type of Violation: **Serious**

IAC 875 - Chapter 10

1910.24(c): Fixed stairway(s) were not designed and/or constructed to carry a load of five times the normal live load anticipated or the strength to carry safely a moving load of 1000lbs:

- (a) Coop Dump Stand - An employee accessed the coop dump stand by using a metal stairs. The metal supports on step number four (4) from the bottom had been replaced with two (2) pieces of wood that were wedged in place. This condition was noted on or about July 9, 2008.

Date By Which Violation Must be Abated:

Proposed Penalty: \$ 2000.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

Citation and Notification of Penalty

Company Name: Agriprocessors, Inc.
Inspection Site: 220 West Street, Postville, IA 52162

Citation 1 Item 2b Type of Violation: **Serious**

IAC 875 - Chapter 10

1910.24(f): Fixed stairs did not have uniform rise height and tread width throughout the flight of stairs:

- (a) Coop Dump Stand - An employee worked on an elevated platform performing the duties of the Coop Dumper. The area was accessed by using a metal stairway with 9 steps. Step four had a rise of six (6") inches with the remaining steps having a rise of ten (10") inches. This condition was noted on or about July 9, 2008.

Date By Which Violation Must be Abated:

Citation 1 Item 2c Type of Violation: **Serious**

IAC 875 - Chapter 10

1910.24(h): Standard railing(s) were not provided on the open side(s) of all fixed industrial stairway(s) and stair platform(s):

- (a) Coop Dump Stand - An employee performed the duties of Coop Dump. The area was accessed by ascending a metal stairway consisting of nine (9) steps. The top step was six (6) feet above the next surface. This condition was noted on or about July 8, 2008.

Date By Which Violation Must be Abated:

Citation and Notification of Penalty

Company Name: Agriprocessors, Inc.
Inspection Site: 220 West Street, Postville, IA 52162

Citation 1 Item 3 Type of Violation: **Serious**

IAC 875 - Chapter 10

1910.37(b)(5): Door(s) which were not an exit or way of exit access, and which were so located as to be likely to be mistaken for an exit, were neither identified by a sign reading "NOT AN EXIT" or similar designation nor identified by a sign indicating their actual character:

- (a) Refrigeration Panelroom 09 - Personnel occupied this area to access the computer that held the process safety management documentation and to access the electrical equipment on a daily basis. The door was marked with the words "Keep Door Closed". The door lead into the ammonia compressor room which would not be exit or way of exit in the case of an emergency. This condition was noted on or about July 9, 2008.

Date By Which Violation Must be Abated:

Proposed Penalty: \$ 2500.00

Citation and Notification of Penalty

Company Name: Agriprocessors, Inc.
Inspection Site: 220 West Street, Postville, IA 52162

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from an accident.

Citation 1 Item 4a Type of Violation: **Serious**

IAC 875 - Chapter 10

1910.101(b): Section 3.2.1, Compressed Gas Association Pamphlet P-1-1965, as adopted by 1910.101(b): Where removable caps were provided for valve protection, such caps were not kept on cylinders at all times except when cylinders were in use:

- (a) Non-flammable Gas Cylinder Storage Area - Used and full compressed gas cylinders containing argon and carbon dioxide were in a storage location. This condition was noted on or about July 9, 2008.

| | |
|---|--------------------------|
| Date By Which Violation Must be Abated: | Immediately Upon Receipt |
| Proposed Penalty: | \$ 2500.00 |

Citation 1 Item 4b Type of Violation: **Serious**

IAC 875 - Chapter 10

1910.253(b)(2)(iv): Valve protection caps, where cylinders were designed to accept caps, were not always in place, handtight, except when cylinders were in use or connected for use:

- (a) Non-flammable Gas Cylinder Storage Area - Used and full compressed gas cylinders containing oxygen and propane were in a storage location. This condition was noted on or about July 9, 2008.

| | |
|---|--------------------------|
| Date By Which Violation Must be Abated: | Immediately Upon Receipt |
|---|--------------------------|

Citation and Notification of Penalty

Company Name: Agriprocessors, Inc.
Inspection Site: 220 West Street, Postville, IA 52162

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from an accident.

Citation 1 Item 5a Type of Violation: **Serious**

IAC 875 - Chapter 10

1910.134(f)(1): The employer did not ensure that employees using a tight-fitting facepiece respirator pass an appropriate qualitative fit test (QLFT) or quantitative fit test (QNFT):

- (a) North RTE Area - On or about March 5, 2008, an employee removed boxed material contaminated with ammonia. An MSA full face dual cartridge respirator was worn to perform work. This condition was noted on or about July 14, 2008.

Date By Which Violation Must be Abated:

Proposed Penalty: \$ 2000.00

Citation 1 Item 5b Type of Violation: **Serious**

IAC 875 - Chapter 10

1910.134(k): Effective, comprehensive and understandable, training was not provided at least annually for those employees required to use respirators:

- (a) North RTE Area - On or about March 5, 2008, an employee removed boxed material contaminated with ammonia. An MSA full face dual cartridge respirator was worn to perform work. This condition was noted on or about July 14, 2008.

Date By Which Violation Must be Abated:

Citation and Notification of Penalty

Company Name: Agriprocessors, Inc.
Inspection Site: 220 West Street, Postville, IA 52162

Citation 1 Item 6 Type of Violation: **Serious**

IAC 875 - Chapter 10

1910.212(a)(1): Machine guarding was not provided to protect operator(s) and other employees from hazard(s) created by pinch points:

- (a) Coop Dump Stand - Personnel operated a mechanical coop dumping device. A chicken coop was placed into the device with an industrial forklift. The chicken coop would then be moved into place by a chain/sprocket transfer and tilted upward to drop the chickens into another area for processing. The chicken coop would then be lowered down and moved back into position for retrieval by the industrial forklift. Personnel were exposed to the pinch point hazard created by the moving chicken coop and the railing. This condition was noted on or about July 9, 2008.

Date By Which Violation Must be Abated:

Proposed Penalty: \$ 3500.00

Citation and Notification of Penalty

Company Name: Agriprocessors, Inc.
Inspection Site: 220 West Street, Postville, IA 52162

Citation 1 Item 7 Type of Violation: **Serious**

IAC 875 - Chapter 10

1910.219(f)(3): Sprocket wheels and chains which were seven feet or less above floors or platforms were not enclosed:

- (a) Coop Dump Stand - The chicken coop dumper was moved by a transfer system comprised of two chain and sprockets. The coop dump stand was six (6) feet above the walking surface. This condition was noted on or about July 9, 2008.
- (b) Chicken Soak and Salt - The Chicken Chiller screw conveyor was turned by a chain and sprocket power transfer system. The guard that was in place did not prevent access to the ingoing nip point created by the chain and the sprocket. The guard left a five (5) inch opening at the top angling down to a one (1) inch opening at the bottom. This condition was noted on or about July 9, 2008.

Date By Which Violation Must be Abated:

Proposed Penalty: \$ 2500.00

Citation 1 Item 8 Type of Violation: **Serious**

IAC 875 - Chapter 10

1910.253(b)(4)(iii): Oxygen cylinders in storage were not separated from fuel gas cylinders or combustible materials (especially oil or grease), a minimum distance of 20 feet (6.1 m) or by a noncombustible barrier at least 5 feet (1.5 m) high having a fire-resistance rating of at least one-half hour:

- (a) Non-flammable Compressed Gas Storage Area - Propane (fuel gas) was stored in the same location as the oxygen cylinders. The area was posted as non-flammable gas cylinders only. This condition was noted on or about July 9, 2008.

Date By Which Violation Must be Abated:

Proposed Penalty: Immediately Upon Receipt
\$ 2500.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

Citation and Notification of Penalty

Company Name: Agriprocessors, Inc.
Inspection Site: 220 West Street, Postville, IA 52162

Citation 1 Item 9 Type of Violation: **Serious**

IAC 875 - Chapter 10

1910.303(b)(1): Electrical equipment was not free from recognized hazards that were likely to cause death or serious physical harm to employees:

- (a) Shipping / Receiving Dock Desk - PVC conduit was broken and unconnected between the panelboard and the duplex outlet. This exposed the insulated conductors supplying 110v power to the receiving computer. This condition was noted on or about July 9, 2008.
- (b) Chicken Salting - Black flexible conduit was pulled away from the fitting that held it in place on the COENCO REAL AIR MOVER Cantex junction box. This allowed moisture to enter the Cantex box. The electrical equipment was using 480v power. This condition was noted on or about July 9, 2008.
- (c) Chicken Salting - Two Square D switches were unlabeled as to which position was ON and OFF. The labeling had worn off. One switch was for the COENCO REAL AIR MOVER and the other was for the ice maker. This condition was noted on or about July 9, 2008.

Date By Which Violation Must be Abated:

Proposed Penalty: \$ 2500.00

Citation 1 Item 10 Type of Violation: **Serious**

IAC 875 - Chapter 10

1910.303(b)(8)(i): Electrical equipment was not firmly secured to the surface on which it was mounted:

- (a) Coop Dump Stand - A duplex outlet was detached from the wall swinging by the flexible cord that supplied the 110v power. This condition was noted on or about July 9, 2008.

Date By Which Violation Must be Abated: Immediately Upon Receipt

Proposed Penalty: \$ 2000.00

Citation and Notification of Penalty

Company Name: Agriprocessors, Inc.
Inspection Site: 220 West Street, Postville, IA 52162

Citation 1 Item 11 Type of Violation: **Serious**

IAC 875 - Chapter 10

1910.305(b)(2): Pull boxes, junction boxes, and fittings were not provided with covers approved for the purpose:

- (a) Security Station - A fire alarm junction box did not have a cover to enclose the conductors. The conductors were spliced together with wire nuts. A pen was placed in the edge of the box. This violation was noted on or about July 9, 2008.

| | |
|---|--------------------------|
| Date By Which Violation Must be Abated: | Immediately Upon Receipt |
| Proposed Penalty: | \$ 5000.00 |

Citation and Notification of Penalty

Company Name: Agriprocessors, Inc.
Inspection Site: 220 West Street, Postville, IA 52162

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from an accident.

Citation 1 Item 12a Type of Violation: **Serious**

IAC 875 - Chapter 10

1910.305(g)(1)(iv)(B): Flexible cords and cables were used for a purpose prohibited by subparagraphs (B) of this paragraph:[B] Where run through holes in walls, ceilings, or floors:

- (a) Chicken Entrance Hallway (By the QC office) - A metal plate was installed in the wall near the bug zapper. Two (2) flexible cords ran through two (2) holes in the metal plate. One (1) cord supplied power to a duplex outlet near the coop dumper. One (1) cord supplied power to a fan used to ventilate the area after the coop dumper. This condition was noted on or about July 9, 2008.
- (b) Lift Station Room - A yellow SO flexible cord was ran through a hole in the brick near the ceiling leading to an undetermined location under the metal ceiling in the hallway beyond this room. This condition was noted on or about July 8, 2008.

| | |
|---|--------------------------|
| Date By Which Violation Must be Abated: | Immediately Upon Receipt |
| Proposed Penalty: | \$ 2000.00 |

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

Citation and Notification of Penalty

Company Name: Agriprocessors, Inc.
Inspection Site: 220 West Street, Postville, IA 52162

Citation 1 Item 12b Type of Violation: **Serious**

IAC 875 - Chapter 10

1910.305(g)(1)(iv)(C): Flexible cords and cables were used for a purpose prohibited by subparagraph (C) of this paragraph:[C] Where run through doorways, windows or similar openings:

- (a) Security Station - A coffee pot was connected to an orange extension cord that ran under a door. This condition was noted on or about July 9, 2008.

Date By Which Violation Must be Abated:

Citation 1 Item 12c Type of Violation: **Serious**

IAC 875 - Chapter 10

1910.305(g)(1)(iv)(D): Flexible cords and cables were used for a purpose prohibited by subparagraph (D) of this paragraph:[D] Where attached to building surfaces:

- (a) Coop Dump Stand - A black flexible cord ran from a hole in the wall behind the coop dump stand along the wall and terminated at a duplex outlet. The flexible cord was attached to the wall of the building with plastic holders. The conductors should have been in conduit. This condition was noted on or about July 9, 2008.

Date By Which Violation Must be Abated: **Immediately Upon Receipt**

Citation and Notification of Penalty

Company Name: Agriprocessors, Inc.
Inspection Site: 220 West Street, Postville, IA 52162

Citation 1 Item 13 Type of Violation: **Serious**

IAC 875 - Chapter 10

1910.305(g)(2)(iii): Flexible cords were not connected to devices and fittings so that tension would not be transmitted to joints or terminal screws:

- (a) Shipping / Receiving dock desk - A 110v power cord for a computer had the outer insulation pulled away from the plug head. This exposed the conductors to the environment and tension. This condition was noted on or about July 9, 2008.
- (b) Chicken Salt and Soak - A yellow flexible SO cord connected a barrel fan to a Square D ON/OFF switch. The electrical power was 480V. The fitting holding the cord into the CANTEX box was not secured in place. This violation was noted on or about July 9, 2008.

Date By Which Violation Must be Abated:

Proposed Penalty: \$ 2500.00

Citation and Notification of Penalty

Company Name: Agriprocessors, Inc.
Inspection Site: 220 West Street, Postville, IA 52162

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from an accident.

Citation 1 Item 14a Type of Violation: **Serious**

IAC 875 - Chapter 10

1910.334(a)(2)(i): Portable cord and plug connected electric equipment and flexible cord sets (extension cords) were not visually inspected before use on any shift for external defects (such as loose parts, deformed and missing pins, or damage to outer jacket or insulation) and for evidence of possible internal damage (such as pinched or crushed outer jacket):

- (a) Lift Station - A 110v yellow SO extension cord was run from a hole in the wall. This cord terminated in a plug head with broken leads stuck in the plug head itself.
- (b) Chicken Salt and Soak - A 480v barrel fan was connected to a Square D ON/OFF switch with a cord that was loose from the junction box on the side of the fan.
- (c) Coop Dump Stand - A 110v power cord with deteriorated outer and inner insulation was laying across a metal step. This plug cord supplied power to a fan.

These conditions were noted on or about July 9, 2008.

Date By Which Violation Must be Abated:

Proposed Penalty: \$ 2500.00

Citation and Notification of Penalty

Company Name: Agriprocessors, Inc.
Inspection Site: 220 West Street, Postville, IA 52162

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from an accident.

Citation 1 Item 14a Type of Violation: **Serious**

IAC 875 - Chapter 10

1910.334(a)(2)(i): Portable cord and plug connected electric equipment and flexible cord sets (extension cords) were not visually inspected before use on any shift for external defects (such as loose parts, deformed and missing pins, or damage to outer jacket or insulation) and for evidence of possible internal damage (such as pinched or crushed outer jacket):

- (a) Lift Station - A 110v yellow SO extension cord was run from a hole in the wall. This cord terminated in a plug head with broken leads stuck in the plug head itself.
- (b) Chicken Salt and Soak - A 480v barrel fan was connected to a Square D ON/OFF switch with a cord that was loose from the junction box on the side of the fan.
- (c) Coop Dump Stand - A 110v power cord with deteriorated outer and inner insulation was laying across a metal step. This plug cord supplied power to a fan.

These conditions were noted on or about July 9, 2008.

Date By Which Violation Must be Abated:

Proposed Penalty: \$ 2500.00

Citation and Notification of Penalty

Company Name: Agriprocessors, Inc.
Inspection Site: 220 West Street, Postville, IA 52162

Citation 1 Item 14b Type of Violation: **Serious**

IAC 875 - Chapter 10

1910.334(a)(2)(ii): When there was a defect or evidence of damage that could expose an employee to injury, the defective or damaged item was not removed from service until the repairs and tests necessary to render the electric equipment safe had been made:

- (a) Lift Station - A 110v yellow SO extension cord was run from a hole in the wall. This cord terminated in a plug head with broken leads stuck in the plug head itself.
- (b) Chicken Salt and Soak - A 480v barrel fan was connected to a Square D ON/OFF switch with a cord that was loose from the junction box on the side of the fan.
- (c) Coop Dump Stand - A 110v power cord with deteriorated outer and inner insulation was laying across a metal step. This plug cord supplied power to a fan.

These conditions were noted on or about July 9, 2008.

Date By Which Violation Must be Abated:

Citation and Notification of Penalty

Company Name: Agriprocessors, Inc.
Inspection Site: 220 West Street, Postville, IA 52162

Citation 2 Item 1 Type of Violation: **Repeat**

IAC 875 - Chapter 10

1910.23(a)(8): Floor hole(s), into which persons could accidentally walk, were not guarded by standard railings with standard toeboards on all exposed sides or by floor hole covers of standard strength and construction:

- (a) Coop Dump Stand - An eleven inch (11") diameter floor drain was uncovered. Personnel would access this area daily going to work, break, lunch and leaving for the day. This condition was noted on or about July 9, 2008.

AGRIPROCESSORS INC. WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS OCCUPATIONAL SAFETY AND HEALTH STANDARD WHICH WAS CONTAINED IN IOSH INSPECTION NUMBER 311615652, CITATION 01, ITEM 03, ISSUED ON 03/06/2008, WITH RESPECT TO THE WORKPLACE LOCATED AT 220 WEST STREET, POSTVILLE, IOWA.

| | |
|---|--------------------------|
| Date By Which Violation Must be Abated: | Immediately Upon Receipt |
| Proposed Penalty: | \$ 7500.00 |

Citation and Notification of Penalty

Company Name: Agriprocessors, Inc.
Inspection Site: 220 West Street, Postville, IA 52162

Citation 2 Item 2 Type of Violation: Repeat

IAC 875 - Chapter 10

1910.36(g)(2): Way(s) of exit access were less than 28 inches in width:

- (a) Non Kosher Pack Off Line - A doorway that provided exit access out of the area through the warehouse measured twenty-five inches (25") clear exit access width. The area was occupied between the abatement date of March 10, 2008 until May 12, 2008. An employee was standing in the area on July 14, 2008. The size of the work area was three feet nine inches (3.75 feet) by thirty six feet for an area of 135 square feet. This condition was noted on or about July 09, 2008.

AGRIPROCESSORS INC. WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS OCCUPATIONAL SAFETY AND HEALTH STANDARD WHICH WAS CONTAINED IN IOSH INSPECTION NUMBER 311615652, CITATION 01, ITEM 05, ISSUED ON 03/06/2008, WITH RESPECT TO THE WORKPLACE LOCATED AT 220 WEST STREET, POSTVILLE, IOWA.

| | |
|---|--------------------------|
| Date By Which Violation Must be Abated: | Immediately Upon Receipt |
| Proposed Penalty: | \$ 5000.00 |

Citation and Notification of Penalty

Company Name: Agriprocessors, Inc.
Inspection Site: 220 West Street, Postville, IA 52162

Citation 2 Item 3 Type of Violation: Repeat

IAC 875 - Chapter 10

1910.37(b)(2): Exit(s) were not marked by readily visible signs:

- (a) Refrigeration Panel Room 09 - The area had two doors leading out of the room. There were no signs on the doors to indicate their purpose. One door was an exit that lead outside and the other door lead into the compressor room. This condition was noted on or about July 9, 2008.

AGRIPROCESSORS INC. WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS OCCUPATIONAL SAFETY AND HEALTH STANDARD WHICH WAS CONTAINED IN IOSH INSPECTION NUMBER 311615652, CITATION 01, ITEMS 07, 08, and 09 ISSUED ON 03/06/2008, WITH RESPECT TO THE WORKPLACE LOCATED AT 220 WEST STREET, POSTVILLE, IOWA.

| | |
|---|--------------------------|
| Date By Which Violation Must be Abated: | Immediately Upon Receipt |
| Proposed Penalty: | \$ 12500.00 |

Citation 2 Item 4 Type of Violation: Repeat

IAC 875 - Chapter 10

1910.305(b)(1)(ii): Unused openings in boxes, cabinets, or fittings were not effectively closed:

- (a) Refrigeration Panel Room 09 - Panel box ER09 LV02 had three (3) openings in the bottom of the box. An employee was using the panelboard during maintenance work. The voltage was marked as 120/208 three phase. This condition was noted on or about July 9, 2008.

AGRIPROCESSORS INC. WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS OCCUPATIONAL SAFETY AND HEALTH STANDARD WHICH WAS CONTAINED IN IOSH INSPECTION NUMBER 311615652, CITATION 01, ITEM 20, ISSUED ON 03/06/2008, WITH RESPECT TO THE WORKPLACE LOCATED AT 220 WEST STREET, POSTVILLE, IOWA.

| | |
|---|--------------------------|
| Date By Which Violation Must be Abated: | Immediately Upon Receipt |
| Proposed Penalty: | \$ 12500.00 |

Iowa Division of Labor Services
Occupational Safety and Health Bureau

Inspection Number: 312422637
Inspection Dates: 07/08/2008-07/14/2008
Issuance Date:

Citation and Notification of Penalty

Company Name: Agriprocessors, Inc.
Inspection Site: 220 West Street, Postville, IA 52162

Citation 2 Item 5 Type of Violation: Repeat

IAC 875 - Chapter 10

1910.305(g)(1)(iv)(A): Flexible cords and cables were used for a purpose prohibited by subparagraph (a) of this paragraph:[A] As a substitute for the fixed wiring of a structure;

- (a) Coop Dump Stand - A flexible cord was connected to a conduit in the hallway. The hallway went to the chicken cut up department. The flexible cord was run through a hole in a metal plate. The flexible cord supplied power to a duplex outlet box next to the coop dump stand. The flexible cord was supported by two (2) holders attached to the building wall. The conduit also supplied power to a second flexible cord with a plug attachment to an area fan and to a bug zapper which was operational in the hallway. This condition was noted on or about July 9, 2008.

AGRIPROCESSORS INC. WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS OCCUPATIONAL SAFETY AND HEALTH STANDARD WHICH WAS CONTAINED IN IOSH INSPECTION NUMBER 311615652, CITATION 01, ITEM 18, ISSUED ON 03/06/2008, WITH RESPECT TO THE WORKPLACE LOCATED AT 220 WEST STREET, POSTVILLE, IOWA.

| | |
|---|--------------------------|
| Date By Which Violation Must be Abated: | Immediately Upon Receipt |
| Proposed Penalty: | \$ 10000.00 |

Iowa Division of Labor Services
Occupational Safety and Health Bureau

Inspection Number: 312422637
Inspection Dates: 07/08/2008 - 07/14/2008
Issuance Date:

Citation and Notification of Penalty

Company Name: Agriprocessors, Inc.
Inspection Site: 220 West Street, Postville, IA 52162

Citation 2 Item 6 Type of Violation: **Repeat**

IAC 875 - Chapter 10

1910.305(j)(2)(iv): Receptacles installed in wet or damp locations were not suitable for the location:

- (a) Lift Station - A four-plex outlet was missing one of the two weatherproof caps. This area was subject to washing with a hose and was visibly wet. This condition was noted on or about July 9, 2008.
- (b) Chicken Cut Up (USDA Inspection Stand) - Duplex outlets did not have clear plastic weatherproof caps in place. This was a wet environment subject to sanitation. (Two different outlets on two different days in the same area.) This condition was noted on or about July 9, 2008 and July 14, 2008.

AGRIPROCESSORS INC. WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS OCCUPATIONAL SAFETY AND HEALTH STANDARD WHICH WAS CONTAINED IN IOSH INSPECTION NUMBER 311615652, CITATION 01, ITEM 21, ISSUED ON 03/06/2008, WITH RESPECT TO THE WORKPLACE LOCATED AT 220 WEST STREET, POSTVILLE, IOWA.

Date By Which Violation Must be Abated:

Proposed Penalty: \$ 12500.00

Iowa Division of Labor Services
Occupational Safety and Health Bureau

Inspection Number: 312422637
Inspection Dates: 07/08/2008 - 07/14/2008
Issuance Date:

Citation and Notification of Penalty

Company Name: Agriprocessors, Inc.
Inspection Site: 220 West Street, Postville, IA 52162

Citation 3 Item 1 Type of Violation: **Other**

IAC 875 - Chapter 10

1910.134(k)(6): The employer did not provide the basic advisory information on respirators, as presented in Appendix D of this section, in written or oral format to employees who wear respirators when such use was not required by the employer:

- (a) Coop Dump Stand - An employee was wearing single strap face piece filtering device. This condition was noted on or about July 9, 2008.

| | |
|---|--------------------------|
| Date By Which Violation Must be Abated: | Immediately Upon Receipt |
| Proposed Penalty: | \$ 1000.00 |

Citation and Notification of Penalty

Company Name: Agriprocessors, Inc.
Inspection Site: 220 West Street, Postville, IA 52162

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from an accident.

Citation 3 Item 2a Type of Violation: **Other**

IAC 875 - Chapter 10

1910.303(e)(1)(i): The manufacturer's name, trademark, or other descriptive marking by which the organization responsible for the product may be identified was not placed on the electrical equipment that was used:

- (a) Chicken Soak and Salt - Square D switch box (Large) - An On/Off switch was not labeled to which direction was On verses Off. The manufacturer data label was no longer visible. There was no marking as to voltage. This was connected to a COENCO barrel fan. This was noted on or about July 9, 2008.
- (b) Chicken Soak and Salt - Square D switch box (Small) - An On/Off switch was not labeled to which direction was On verses Off. The manufacturer data label was no longer visible. There was no marking as to voltage. This was connected to an ice machine. This was noted on or about July 9, 2008.

Date By Which Violation Must be Abated:

Proposed Penalty: \$ 1000.00

Citation and Notification of Penalty

Company Name: Agriprocessors, Inc.
Inspection Site: 220 West Street, Postville, IA 52162

Citation 3 Item 2b Type of Violation: **Other**

IAC 875 - Chapter 10

1910.303(e)(1)(ii): Markings were not provided on electrical equipment giving voltage, current, wattage, and other ratings as necessary:

- (a) Chicken Soak and Salt - Square D switch box (Large) - An On/Off switch was not labeled to which direction was On verses Off. The manufacturer data label was no longer visible. There was no marking as to voltage. This was connected to a COENCO barrel fan. This was noted on or about July 9, 2008.
- (b) Chicken Soak and Salt - Square D switch box (Small) - An On/Off switch was not labeled to which direction was On verses Off. The manufacturer data label was no longer visible. There was no marking as to voltage. This was connected to an ice machine. This was noted on or about July 9, 2008.

Date By Which Violation Must be Abated:

Citation and Notification of Penalty

Company Name: Agriprocessors, Inc.
Inspection Site: 220 West Street, Postville, IA 52162

Citation 3 Item 2c Type of Violation: **Other**

IAC 875 - Chapter 10

1910.303(e)(2): Markings on electrical equipment were not of sufficient durability to withstand the environment involved:

- (a) Chicken Soak and Salt - Square D switch box (Large) - An On/Off switch was not labeled to which direction was On verses Off. The manufacturer data label was no longer visible. There was no marking as to voltage. This was connected to a COENCO barrel fan. This was noted on or about July 9, 2008.
- (b) Chicken Soak and Salt - Square D switch box (Small) - An On/Off switch was not labeled to which direction was On verses Off. The manufacturer data label was no longer visible. There was no marking as to voltage. This was connected to an ice machine. This was noted on or about July 9, 2008.

Date By Which Violation Must be Abated:

Mary L. Bryant
IOSH Administrator

Iowa Division of Labor Services
Occupational Safety and Health Bureau

1000 East Grand
Des Moines, IA 50319
Phone: (515)281-3606 FAX: 515-281-7995

PENALTY SUMMARY

Company Name: Agriprocessors, Inc.
Inspection Site: 220 West Street, Postville, IA 52162
Issuance Date:
Case File/CSHO ID: 12476 / S4823

Summary of Penalties for Inspection Number 312422637

| | |
|---------------------------------|-----------------------|
| Citation 1, Serious | = \$ 39000.00 |
| Citation 2, Repeat | = \$ 60000.00 |
| Citation 3, Other | = \$ 2000.00 |
| TOTAL PROPOSED PENALTIES | = \$ 101000.00 |

Mary L. Bryant
IOSH Administrator

IN THE DISTRICT COURT OF IOWA

IN AND FOR ALLAMAKEE COUNTY

**In the matter of the inspection of
Agriprocessors, Inc.**

No:

**Application For
Inspection Warrant**

COMES NOW the Labor Commissioner, pursuant to Iowa Code §808.14 (2007) and the Iowa Occupational Safety and Health Act (IOSHA), Iowa Code Chapter 91 (2007), and petitions the Court for an Inspection Warrant to permit inspection of the Agriprocessors, Inc. workplace located at 220 W Street, Postville, Iowa. In support of this application, the Labor Commissioner, states as follows:

1. The Labor Commissioner is charged with enforcing the Wage Payment Collection Law, Iowa Code Chapter 91A, and the Child Labor Law, Iowa Code Chapter 92.

2. Iowa Code 91.9 (2007) provides that the Labor Commissioner or his representative is authorized:

...to enter any factory or mill, workshop, mine, store, railway facility, including locomotive or caboose, business house, public or private work, when the same is open or in operation, for the purpose of gathering facts and statistics such as are contemplated by this chapter and to examine into the methods of protection from danger to employees, and the sanitary conditions in and around such buildings and places, and make a record thereof.

3. In addition, under Iowa Code 91A.9(2) (2007) under the Wage Payment Collection Law, the Labor Commissioner:

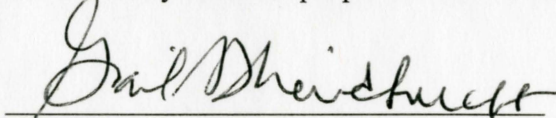
...may, consistent with due process of law, enter any place of employment to inspect records concerning wages and payrolls,, to question the employer and employees, and to investigate such facts, conditions or matters as are deemed appropriate in determining whether any person has violated the provision of this chapter.

5. Appendix A, Affidavit of Gail A. Sheridan-Lucht, Attorney for the Labor Commissioner establishes the factual basis for an inspection warrant.

6. According to Appendix A, an attorney employed and authorized by the Labor Commissioner presented appropriate credentials and explained the purpose for being at the establishment. Management at the workplace denied access to the attorney on August ___, 2008.

7. This application for an Inspection Warrant is made pursuant to Iowa Code Chapter 91 and Iowa Code 808.14 and Marshall, Secretary of Labor, et.al. v. Barlow's Inc., 436 U.S. 307 (1978).

THEREFORE the Labor Commissioner petitions this Court for an Inspection Warrant in order to carry forth the purposes of Iowa Code Chapters 91, 91A and 92.



Gail A. Sheridan-Lucht #9013
Attorney for the Labor Commissioner
Iowa Division of Labor Services
1000 E. Grand Avenue
Des Moines, IA 50319
515-281-6374 (telephone)
515-281-7995 (fax)
Employer Identification No. 42-6004512

IN THE DISTRICT COURT OF IOWA
IN AND FOR ALLAMAKEE COUNTY

In the matter of the inspection of

**Agriprocessors, Inc.
220 West Street
Postville, Iowa 52162**

No.: _____

Inspection Warrant

On August __, 2008, an Application for a Warrant to permit inspection pursuant to Iowa Code §808.14 (2007) and Iowa Code Chapters 91, 91A, 91D, 91E and 92 (2007) was presented to this Court, and the Court, being duly advised of the premises, finds that a Warrant should be issued pursuant to said Application. The Court finds that probable cause has been shown for the issuance of the Inspection Warrant to enter the premises under the control of Agriprocessors, Inc., located at 220 West Street, Postville, Iowa, to conduct a wage and hour and child labor inspection pursuant to Iowa Code Chapters 91, 91A, 91D, 91E and 92 (2007).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by

this Court that the owners, operators, or agents of Agriprocessors, Inc. located in Postville, Iowa, are hereby directed to allow the authorized representatives of the Labor Commissioner to enter the premises under the control of Agriprocessors, Inc. and conduct a wage and hour and child labor inspection of all areas of said workplace where work is performed by employees. This inspection shall be in accordance with Iowa Code Chapters 91, 91A, 91D, 91E and 92 (2007), wherein provisions are made to allow authorized representatives of the Labor Commissioner to inspect and investigate during regular working hours and at other reasonable times, and within

reasonable limits and within a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and written or other material therein, and to question any such employer, owner, operator, agent or employee and to take photographs and employ other reasonable investigative techniques, including but not limited to videotapes, audiotapes, etc., as necessary. Inspection of the premises as authorized by the Workforce Development Department, Division of Labor Services, shall be executed within one month of the date of issuance of the Inspection Warrant.

Judge
1st Judicial District

AFFIDAVIT

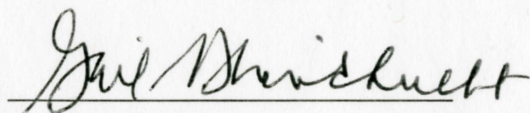
State of Iowa)
) ss:
County of Polk)

I, Gail A. Sheridan-Lucht, state I am an Attorney for the Labor Commissioner for the State of Iowa, Iowa Workforce Development Department, Division of Labor Services, and, in that capacity, enforce the labor and employment laws for the State of Iowa. I was assigned to conduct a wage and child labor investigation at the Agriprocessors, Inc. workplace by David Neil, Labor Commissioner for the State of Iowa, on or about January 2008.

I went to the Agriprocessors Inc. workplace located at 220 West Street, Postville, Iowa, during regular working hours in order to conduct an onsite child labor investigation for the purpose of determining whether the employer at the workplace was in compliance with the Iowa child labor laws pursuant to Iowa Code Chapter 92 (2007) and the rules and regulations promulgated thereunder.

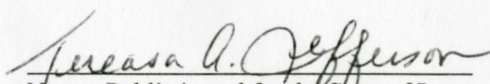
I presented my credentials and explained the purpose for being at the establishment.

I was denied admission to the worksite, to conduct an onsite child labor investigation by management personnel on August ___, 2008.



Gail A. Sheridan-Lucht
Attorney for the Labor Commissioner

Subscribed and sworn to before me on this 29 day of August, 2008.



Notary Public in and for the State of Iowa

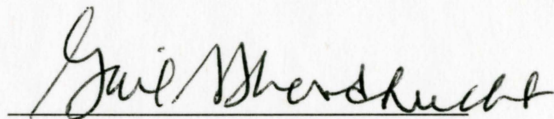


IN THE DISTRICT COURT OF IOWA
IN AND FOR ALLAMAKEE COUNTY

**In the matter of the inspection of
Agriprocessors, Inc.,**

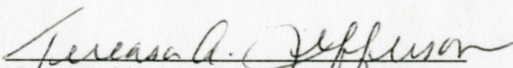
)
)
)
) **No. _____**
)
) **Return of Service**
)

I, Gail A. Sheridan-Lucht, hereby certify that an Inspection Warrant issued on August
____, 2008, by Honorable Judge _____, was duly served on Agriprocessors,
Inc., located at 220 W Street, Postville, Iowa, on August ____, 2008, and an inspection was
initiated on the same day.



Gail A. Sheridan-Lucht
Attorney for the Labor Commissioner
WORKFORCE DEVELOPMENT DEPARTMENT
DIVISION OF LABOR SERVICES
1000 East Grand Avenue
Des Moines, IA 50319-0209
Telephone (515) 281- 6374
Fax (515) 281-7995

Subscribed and sworn to before me on this 29 day of August, 2008.


Notary Public in and for the State of Iowa



IN THE IOWA DISTRICT COURT FOR ALLAMAKEE COUNTY

In the Matter of the Inspection of:
Agriprocessors, Inc.

Case No. _____

DAVID NEIL,
LABOR COMMISSIONER,
STATE OF IOWA,
Applicant for Inspection Warrant,
VS.
AGRIPROCESSORS, INC.,
Respondent.

MEMORANDUM OF LAW

COMES NOW the Labor Commissioner, by and through his counsel Gail A. Sheridan-Lucht and hereby submits the following in support of his application for Inspection Warrant.

Iowa Code Chapters 91, 91A, 91D, 91E and 92 (2007) are the Labor Commissioner's duties and powers, Iowa's Wage Payment Collection Law, Minimum Wage Law, Non-English Speaking Employees Law and the Child Labor Law, respectively. The Labor Commissioner's inspectors are authorized to enter workplaces in order to carry out the purpose of the aforementioned laws.

Specifically, the Labor Commissioner's inspectors are given authority to enter work places by the following language:

The labor commissioner and the inspectors shall have the power to enter any factory or mill, workshop, mine, store, railway facility, including locomotive or caboose, business house, public or private work, when the same is open or in operation, for the purpose of gathering facts and statistics such as are contemplated by this chapter, and to examine into the methods of protection from danger to employees, and the sanitary conditions in and around such buildings and places, and make a record thereof.

Iowa Code 91.9 (2007).

In addition, under Iowa Code 91A.9(2) (2007), the Wage Payment Collection Law:

2. The commissioner may, consistent with due process of law, enter any place of employment to inspect records concerning wages and payrolls, to question the employer and employees, and it investigate such facts, conditions or matters as are deemed appropriate in determining whether any person has violated the provision of this chapter.

Furthermore, under Iowa Code 91E.5 (2007), the Non-English Speaking Employees Law, the Labor Commissioner may:

Inspect employment records relating to the total number of employees and non-English speaking employees, and the services provided to non-English speaking employees and interview an employer or employee during working hours or at other reasonable times.

In addition, under Iowa Code 92.22 (2007), the Child Labor Law, the Labor Commissioner has the following authority:

The labor commissioner shall enforce this chapter. All such officers and any person authorized in writing by a court of record shall have the authority to enter, for the purpose of investigation, any of the establishments and places mentioned in this chapter and to freely question any person therein as to any violations of this chapter.

Authority for the issuance of administrative search warrants is found at Iowa Code 808.14¹ that states:

The courts and other appropriate agencies of the judicial branch of the government of this state may issue administrative search warrants, in accordance with the statutory and common law requirements for the issuance of such warrants, to all governmental agencies or bodies expressly or impliedly provided with statutory or constitutional home rule authority for inspections to the extent necessary for the agency or body to carry out such authority, to be executed or otherwise carried out by an officer or employee of the agency or body.

Probable cause in the case of administrative search warrants is determined by the application of a different standard than is applicable in the criminal context. Titan Tire Corporation v. Labor Commissioner, 637 N.W.2d 115, 122 (Iowa 2001); State v. Green, 540 N.W.2d 649, 654 (Iowa 1995); Matter of Inspection of Workplace of Carondelet Coke Corp., 741 F.2d. 172, 174-175 (8th Cir. 1984). The Iowa Supreme Court recently held probable cause for an IOSHA inspection may be based on “specific evidence of an existing violation or a showing that reasonable legislative or administrative standards for conducting an investigation are satisfied with respect to a particular establishment.” Titan Tire 637 N.W.2d at 122. See also Marshall v. Barlow's Inc., 436 U.S. 307, 320, 98 S.Ct. 1816, 1824-1825, 56 L. Ed2d 305, 316 (1978). Specific evidence sufficient to establish administrative probable cause for an existing violation includes:

the proposed inspection is based upon a reasonable belief that a violation has been or is being committed and not upon a desire to harass the target of the inspection.

¹ Iowa Code § 808.14 was enacted shortly after the Iowa Supreme Court decided in *Meier v. Sulhoff*, 360 N.W. 2d 722 (1985) that administrative search warrants could not be issued by the courts without specific statutory authority.

This requirement is met by a showing of specific evidence sufficient to support a reasonable suspicion of a violation.

Id. at 123.

In Carondelet Coke Corp., the Eighth Circuit considered the constitutionally permissible scope of an occupational safety and health inspection warrant issued in response to an employee complaint. Carondelet Coke Corp., 741 F.2d. 172, 175-177 (8th Cir. 1984). In Carondelet the district court magistrate limited the scope of the warrant to those areas physically implicated by the complaint. Id. The Eighth Circuit reversed, holding that a “wall-to-wall” search was not unreasonable under the facts. Id. IOSHA and the administrative rules adopted thereunder in many respects mirror the federal act and regulations at issue in Carondelet. Therefore, federal case law is persuasive. Titan Tire 637 N.W.2d at 121.

In Titan Tire, the Iowa Supreme Court included the following discussion of the history of ex parte inspection warrants for occupational safety and health inspections:

In a footnote, the Barlow’s opinion stated that “a regulation expressly providing that the Secretary could proceed *ex parte* to seek a warrant or its equivalent would appear to be . . . within the Secretary’s power. . . .” Id. At 320 n.15, 98 S.Ct. at 1824 n. 15, 56 L. Ed.2d at 316 n.15. The Court’s approval of such procedures meant that they passed the reasonableness requirement of the Fourth Amendment.

Id.

In addition, the Eighth Circuit has acknowledged the necessity of surprise is served through *ex parte* warrants: “It is evident that Congress desired “an enforcement scheme based on surprise and undelayed searches” and “would very much prefer immediate execution of duly issued *ex parte* warrants to ...litigation-laden delays.” Marshall v Shellcoat Corp., 592 F.2d 1369, 1372 (5th Cir. 1979); Donovan v. Trinity Indus., Inc., 12 O.S.H.C. 1721 (E.D. Ark. 1986).

Iowa Admin. Code r. 875—3.2(3) provides that compulsory process means the institution of any appropriate action, including *ex parte* application for an inspection warrant or its equivalent. *Ex parte* inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this rule.

Iowa Admin. Code r. 875—3.2(2) provides:

Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the labor commissioner or a designee, circumstances exist which make such preinspection process desirable or necessary.

THEREFORE, the Labor Commissioner requests that the Court issue a search warrant to allow an inspection as described in the application and accompanying documents.

A handwritten signature in cursive script, appearing to read "Gail A. Sheridan-Lucht", written over a horizontal line.

Gail A. Sheridan-Lucht #AT0007193

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